

reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

- (1) Provide for a system of internal controls to assure ongoing compliance;
- (2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;
- (3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and
- (4) Provide training for appropriate personnel.

(Approved by the Office of Management and Budget under control number 7100-0196)

[Reg. H, 52 FR 2860, Jan. 27, 1987]

#### **§ 208.15 Agricultural loan loss amortization.**

(a) *Definitions.* For purposes of this section:

- (1) *Agricultural Bank* means a bank:
  - (i) The deposits of which are insured by the Federal Deposit Insurance Corporation;
  - (ii) Which is located in an area of the country the economy of which is dependent on agriculture;
  - (iii) Which has total assets of \$100,000,000 or less as of the most recent Report of Condition; and
  - (iv) Which has:
    - (A) At least 25 percent of its total loans in qualified agricultural loans and agriculturally-related other property; or
    - (B) Less than 25 percent of its total loans in qualified agricultural loans and agriculturally-related other property but which bank the Board or the Reserve Bank in whose District the bank is located or its primary state regulator has recommended to the Federal Deposit Insurance Corporation for eligibility under this part.

(2) *Qualified agricultural loan* means:

- (i) Loans qualifying as *loans to finance agricultural production and other loans to farmers* or as *loans secured by farm land* for purposes of Schedule RC-C of the FFIEC Consolidated Report of Condition or such other comparable schedule;
- (ii) Loans secured by farm machinery;
- (iii) Other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Federal Reserve; and
- (iv) The remaining unpaid balance of any loans, described in paragraphs (a)(2) (i), (ii) and (iii) of this section, that have been charged off since January 1, 1984, and that qualify for deferral under this section.

(3) *Accepting Official* means:

- (i) The Reserve Bank in whose District the bank is located; or
- (ii) The Director of the Division of Banking Supervision and Regulation in cases in which the Reserve Bank cannot determine that the bank qualifies under the regulation.

(4) *Agriculturally-related other property* means any property, real or personal, that the bank owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of §§ 208.15(a)(1)(iv) and 205.15(e), the value of such property shall include the amount previously charged off as loss.

(b) *Loss amortization and reappraisal.*

(1) *Provided* That there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, its officers, directors, or principal shareholders, a bank that has been accepted under this section may, in the manner described below, amortize in its Reports of Condition and Income:

(i) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991.

(ii) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally-related other property.

(2) Amortization under this section shall be computed over a period not to

exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998.

(c) *Accounting for amortization.* Any bank which is permitted to amortize losses in accordance with paragraph (b) of this section, may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in primary capital as per § 208.13 of this part.

(d) *Eligibility.* A proposal submitted in accord with paragraph (f) of this section shall be accepted, subject to the conditions described in paragraph (e) of this section, if the Accepting Official finds:

(1) The proposing bank is an agricultural bank;

(2) The proposing bank's current capital is in need of restoration, but the bank remains an economically viable, fundamentally sound institution;

(3) There is no evidence that fraud or criminal abuse by the bank or its officers, directors, or principal shareholders led to significant losses on qualified agricultural loans or from a reappraisal or sale of agriculturally-related other property; and

(4) The proposing bank has submitted a capital plan approved by the Accepting Official that will restore its capital to an acceptable level.

(e) *Conditions on acceptance.* All acceptances of proposals shall be subject to the following conditions:

(1) The bank shall fully adhere to the approved capital plan and shall obtain the prior approval of the Accepting Official for any modifications to the plan;

(2) With respect to each asset subject to loss deferral under the program, the bank shall maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations;

(3) The financial condition of the bank shall not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(4) The bank agrees to make a reasonable effort, consistent with safe and

sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally-related other property, not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

(5) The bank shall agree to provide the Accepting Official, upon request, with such information as the Accepting Official deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.

(f) *Submission of proposals.* (1) A bank wishing to amortize losses on qualified agricultural loans or from reappraisal or sale of agriculturally-related other property shall submit a proposal to the appropriate Accepting Official.

(2) The proposal shall contain the following information:

(i) Name and address of the bank;

(ii) Information establishing that the bank is located in an area the economy of which is dependent on agriculture; the information could consist of a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in such an area.

(iii) A copy of the bank's most recent Report of Condition and Income;

(iv) If the Report of Condition and Income fails to show that at least 25 percent of the bank's total loans are qualified agricultural loans, the basis upon which the bank believes that it should be declared eligible to amortize losses;

(v) A capital plan demonstrating that the bank will achieve an acceptable capital level not later than the end of the bank's amortization period. The plan should provide for a realistic improvement in the bank's capital, over the course of the amortization period, from earnings retention, capital injections, or other sources; and include specific information regarding dividend levels, compensation to directors, executive officers and individuals who have a controlling interest and in turn to their related interests, and payments for services or products furnished by affiliated companies.

(vi) A list of the loans and agriculturally-related other property upon which

the bank proposes to defer loss including for each such loan or property, the following information:

(A) The name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;

(B) The date on which the loss was declared;

(C) The basis upon which the loss resulted from a qualified agricultural loan;

(vii) A certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;

(viii) A copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

(ix) Such other information as the Accepting Official may require.

(g) *Revocation of eligibility.* The failure to comply with any condition in an acceptance or with the capital restoration plan is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). Additionally, acceptance of a bank for loss amortization will not foreclose any administrative action against the bank that the Board may deem appropriate.

[Reg. H, 52 FR 42090, Nov. 3, 1987, as amended at 53 FR 20812, June 7, 1988]

**§ 208.16 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.**

(a) *Filing requirements.* Except as otherwise provided in this section, a State member bank the securities of which are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the *1934 Act*) (15 U.S.C. 78l (b) and (g)) shall comply with the rules, regulations and forms adopted by the Securities and Exchange Commission (*Commission*) pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78l, 78m, 78n(a), (c), (d), (f) and 78p). The term *Commission* as used in those rules and regulations shall with respect to securities issued by State member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted of State member banks with total assets of \$150 million or less.* (1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 Act, a State member bank that has total assets of \$150 million or less as of the end of its most recent fiscal year and no foreign offices may elect to substitute for the financial statements required by the Commission's Form 10-Q the balance sheet and income statement from the quarterly report of condition required to be filed by such bank with the Board under section 9 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 033 or 034).

(2) A State member bank may not elect to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section if the amounts reported for net income, total assets or total equity capital in those statements, which are prepared on the basis of Federal bank regulatory reporting standards, would differ materially from such amounts reported in financial statements prepared in accordance with generally accepted accounting principles (*GAAP*).

(3) A State member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section in its form 10-Q shall include earnings per share or net loss per share data prepared in accordance with GAAP and disclose any material contingencies as required by Article 10 of the Commission's Regulation S-X (15 CFR 210.10-01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10-Q.

(c) *Filing instructions, inspection of documents, and nondisclosure of certain information filed.* (1) All papers required to be filed with the Board pursuant to the 1934 Act or regulations thereunder shall be submitted to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers